Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1971

No. ..... 71 - 563

JAMES R. ROHRBAUGH, LAURELHURST UNITED PRESBYTERIAN CHURCH, INC., a Washington nonprofit corporation, and ALLEN PRIER, chairman of the Board of Trustees and representing all other trustees similarly situated, and RALPH SCHREINER, R. W. SPRAGUE, S. R. HANSEN, C. W. GIBBS, R. T. DOWNS, JERRY JOURNEY, EARL E. McMILLAN, FRANK JOHNSON, KARL HOUSE, ARNOLD J. CARLSON, DR. DOO SOO SUH, PHIL GALLAHER, DR. KIRK DOUGLAS, GLEN CARSON and EWART SUFFEL, being the Elders and members of the Session and some of the withdrawing members of the Laurelhurst Church and representing all others similarly situated,

Petitioners,

vs.

THE PRESBYTERY OF SEATTLE, INC., a nonprofit Washington corporation, and WILLIAM H. GOLEEKE, being a member of the Laurelhurst United Presbyterian Church and representing all others similarly situated,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

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vs.

THE PRESBYTERY OF SEATTLE, INC., a nonprofit Washington corporation, and WILLIAM H. GOLEEKE, being a member of the Laurelhurst United Presbyterian Church and representing all others similarly situated,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

Certiorari is respectfully sought to review a final judgment of the Supreme Court of the State of Washington, which awarded possession of the respondent Laurelhurst Presbyterian Church's property to respondents, in violation, petitioners submit, of the First and Fourteenth Amendments of the Constitution of the United States and controlling decisions of the Supreme Court of the United States.

OPINIONS BELOW

The opinion rendered in the trial court in Seattle by the Honorable William J. Wilkins, Judge of the Superior Court of King County, Washington, is reprinted in Appendix A.

The opinion of the Supreme Court of the State of Washington (79 Wn.2d 367, 485 P.2d 615) is reprinted in Appendix B.

STATEMENT OF JURISDICTIONAL GROUNDS

(i) The date of the final judgment sought to be reviewed is July 23, 1971 and it was entered on that date. A copy of the final judgment is reprinted in Appendix C.

(ii) A rehearing was denied on July 23, 1971.

(iii) The statutory provision believed to confer on this court jurisdiction to review the decree on certiorari is 28 U.S.C. 1257.

(iv) The execution of the judgment was stayed by the court below pending final disposition by this court of this application for a writ of certiorari by stay order entered on July 30, 1971.

QUESTIONS PRESENTED FOR REVIEW

1. Did not the Supreme Court of the State of Washington violate the First Amendment in divesting petitioner Laurelhurst Church of the possession and enjoyment of its church property by enforcing a purely ecclesiastical decision made after detailed procedures under an elaborate ecclesiastical book of order—a strictly religious document by self-description—and in supporting this divestiture by *Watson v. Jones*, 13 Wall (80 U.S.) 679 (1871), misconstrue and misapply *Watson v. Jones*, as recently construed and limited by this court in *Presbyterian Church in the*

United States v. Hull Memorial Church, 393 U.S. 440, 21 L.Ed.2d 658, 89 S.Ct. 601 (1969), certiorari denied on second review of Georgia case after remand, 396 U.S. 1041, 24 L.Ed.2d 693, 90 S.Ct. 680 (1970); and in *Maryland & Virginia Eldership, etc. v. Church of God*, 393 U.S. 528, 21 L.Ed.2d 750, 89 S.Ct. 850 (1969), remanding 294 Md. 650, 241 A.2d 691 (1968), and dismissing appeal from second Maryland decision, 254 Md. 162, 254 A.2d 162 (1969) in 396 U.S. 367, 24 L.Ed.2d 582, 90 S.Ct. 499 (1970)?

2. Did not the Supreme Court of the State of Washington by accepting ecclesiastical procedure and practice under a religious Book of Order for divestiture of church property, patently and completely fail, under the First Amendment, to determine the right to church property by purely "neutral principles of law developed for use in *all* property disputes," as commanded in *Hull, supra*, 393 U.S. 440, 449, 396 U.S. 1041, and *Church of God, supra*, 393 U.S. 528, 396 U.S. 367? In other words, how can a principle of law be "neutral," "developed for use in *all* property disputes," if it accepts the ecclesiastical decision of one of the parties made under elaborate ecclesiastical rules?

3. Did not the Supreme Court of the State of Washington, in deciding a church property dispute, violate the First Amendment, when it determined from the trial court's finding in the record that the United Presbyterian Church in the U.S.A. is an "hierarchical structure," a determination which necessarily requires examination of the religious doctrines of the church and a conclusion thereon, and did it not by so doing make a doctrinal determination and

judicially "establish" a church to which property is awarded, and judicially establish the New Confession of 1967, in defiance of *Hull, supra*, 393 U.S. 440, 449, 396 U.S. 1041.

4. Did not the Supreme Court of the State of Washington egregiously err in holding that *Hull, supra*, 393 U.S. 440, follows *Watson v. Jones, supra*, in holding that civil courts can enforce ecclesiastical decrees?

5. Did not the Supreme Court of the State of Washington violate the First Amendment in holding that

> "The record title is in the First United Presbyterian Church of Seattle, a corporation which by its bylaws is subject to the discipline of the United Presbyterian Church and is governed by a session which must act in accord with that discipline",

and by this reasoning through the medium of internal church law and practice vest title and control in the respondent Presbytery?

6. Does not the decision of the Supreme Court of the State of Washington unconstitutionally deny to petitioners their freedom of religion to adhere to the historic Westminster confessional documents and to enjoy their church property in so doing? *Maryland and Virginia Eldership v. Chuch of God*, 396 U.S. 367 (1970), dismissing appeal from 254 Md. 162 (1969).

CONSTITUTIONAL PROVISIONS

The Constitutional provisions involved are:

FIRST AMENDMENT

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Code, *Constitution Amendments*, p. 4

FOURTEENTH AMENDMENT

"Nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Code, *Constitution Amendments*, p. 6

The First Amendment is binding on the States through the Fourteenth Amendment. *Hull, supra*, 393 U.S. 440.

STATEMENT OF THE CASE

This case involves a dispute over right to ownership and possession of real and personal property held by the United Laurelhurst Presbyterian Church, Inc., a State of Washington corporation (hereinafter sometimes referred to as the Laurelhurst Church), a former congregation of the United Presbyterian Church in the United States of America (hereinafter sometimes referred to as United Presbyterian Church or national church) and represented in the Seattle, Washington area by respondent The Presbytery of Seattle, Inc. (hereinafter sometimes referred to as Presbytery). The petitioner, Dr. James R. Rohrbaugh, is the pastor of the Laurelhurst Church, and he files this petition, along with the Laurelhurst Church corporation, and the various officers of the corporation and the church.

The property, both real and personal, was purchased by the congregation of the Laurelhurst Church, located in the City of Seattle. The record title has at all times material herein been, and is now, in the petitioner (defendant below) United Laurelhurst Presbyterian Church, Inc. duly incorporated under the laws of the State of Washington, controlled by trustees elected pursuant to statute.

In this action the respondent (plaintiff below) The

Presbytery of Seattle, Inc., a Washington corporation, representing the National United Presbyterian Church, and comprising some 63 Presbyterian congregations in the Seattle area, seeks to obtain possession and ownership of the Laurelhurst Church.

The dispute arises as follows:

Prior to May 22, 1967, the United Presbyterian Church in the United States of America (the national church) had for its Confession the three historic Westminster documents, namely, the Westminster Confession of Faith, the Larger Catechism, and the Shorter Catechism, agreed on three centuries ago. See The Constitution of the United Presbyterian Church in the U.S.A., 1965-66, Exhibit 8.

In May of 1967, the United Presbyterian Church in the United States of America (the national church), by action of its General Assembly, adopted a new Confession, called the "Confession of 1967." This new Confession made substantial changes in its historic doctrines and beliefs. See The Confession of 1967 (Exhibit 2). It incorporated The Nicene Creed, the Apostles Creed, the Scots Confession, the Heidelberg Catechism, the Second Helvetic Confession, the Westminster Confession of Faith, the Shorter Catechism, and the Theological Declaration of Barman, and at the same time eliminated from its Constitution the Larger Catechism, containing the detailed exposition of important historical Presbyterian doctrines, thus adding several new theological statements, and excising some important Presbyterian beliefs not elsewhere stated. It also included political and social pronouncements on various secular issues.

Parenthetically, the trial court found that there was

"abundant proof of substantial change in doctrine." St. 1047; Appendix A.

For some years there was much national concern and debate within the United Presbyterian Church over the proposed confessional changes. They were adopted by the General Assembly with a substantial dissenting vote on May 22, 1967. Exhibits 23, 27, 29. Deeply disturbed by this adoption, as were many other congregations of the national church (Exhibit 30), and desiring to adhere to the three historic Westminster confessional documents, the Laurelhurst congregation carefully pondered withdrawal from the national body. Two polls, taken several months apart, showed an overwhelming desire on the part of the congregation to withdraw from the national body because of the latter's departure from doctrine. Regular meetings of the membership of the Laurelhurst Church corporation, and of the congregation were held on October 5, 1967. The corporation and the congregation voted to withdraw from the national church by a vote of 183 to 11 (Statement of Facts (Reporter's transcript of testimony under State of Washington practice hereinafter abbreviated "St.") 397, 447-8; Ex. 13). On that date they renounced the jurisdiction of the national church. St. 510

As a result of this action, the Presbytery of Seattle, representing the national church, demanded possession of the church property and removal of its pastor and made various procedural moves under the religious laws and practices of the church to obtain possession and control.

On refusal, this action was commenced by Presbytery to obtain possession and control of the church property and to remove the pastor.

The complaint alleged its representative capacity for

the national church; that the national church was a religious body which under its ecclesiastical law had a presbyterian form of government, *i.e.*, that the various component parts of the organization were integral parts of a single sovereign church, and that each part was not an independent or congregational unit. (Denied by Petitioners in their answer. See Transcript.)

The complaint, while acknowledging title and record ownership of the church property in the petitioner Laurelhurst Church corporation, alleged that the action of the Laurelhurst Church and congregation was void in that it was contrary to the constitution of the national church, and further that no individual church could withdraw from the denomination and retain its property to the exclusion of plaintiffs and the national church.

Respondents then alleged that they had taken proper procedural steps under church law to obtain possession of the church but that the defendants refused.

Relief requested was a temporary and permanent injunction intended to oust Dr. Rohrbaugh as pastor, take ownership and possession of the Laurelhurst Church property away from the Laurelhurst church corporation and its statutory trustees, and give control to the plaintiff Presbytery.

In their answer defendants Rohrbaugh and Laurelhurst Church (petitioners here) denied the plaintiffs' claim that the national church was an "hierarchical" church, and any jurisdiction of plaintiff Presbytery over defendants, and further alleged that the ownership of the Laurelhurst Church property being in the Laurelhurst Church corporation, the national church had forfeited its rights, if any it had, as a result of major and substantial changes in

historic Presbyterian doctrine made by it in adopting the new Confession of 1967 on May 22, 1967.

An attempt by plaintiff Presbytery to obtain immediate possession of the church property by injunction was denied by the Superior Court in Seattle on December 21, 1967.

On January 31, 1968, trial commenced before the Honorable William J. Wilkins, without a jury. After eight days of trial devoted largely to "departure from doctrine" evidence which was at that time (before the *Hull* and *Church of God* cases in this Court) deemed by petitioners to be controlling, final argument was postponed to allow parties to effect a reconciliation if possible, and to await decision of a similar case which was then pending before the Supreme Court of the United States on writ of certiorari to the Supreme Court of the State of Georgia. *Hull*, 224 Ga. 61, 159 S.E.2d 690 (1968).

At the time this case was commenced and tried, the applicable law was deemed by petitioners to be:

> "No denomination, however, can exercise its share of control over a local congregation so as to require the property of the latter to be used for the propagation of doctrines in conflict with the fundamental teachings of the denomination as accepted at the time the local church united with the denomination . . . *In such case those who adhere to the original constitution and confession of faith are entitled to the use of the property.*" 76 CJS, Religious Societies § 70, p. 849. (Emphasis added)

This statement of law in the State of Washington at the time was recorded in *Seventh Elect Church of Israel v. Dexter Horton Bank*, 167 Wash. 472, 478-9, 10 P.2d 207, where the Washington court said:

> "And the courts, when called upon, will award the property, and all rights pertaining thereto, to those who continue to adhere to the doctrine, tenets, and rules of the church as they existed before the division." (Citing many cases.)

The Supreme Court of Georgia had made a similar ruling in the *Hull* church case below, 224 Ga. 61, 159 S.E.2d 690 (1968), reversed and remanded in *Hull*, 393 U.S. 440 (January 27, 1969), title awarded to local churches on remand, 225 Ga. 259, 167 S.E.2d 685 (1969), certiorari denied 396 U.S. 1041.

At the trial before Judge Wilkins petitioners proved substantial changes in doctrine. Judge Wilkins found that there was "abundant proof of substantial change in doctrine." (St. 1047; Appendix A)

On the record, petitioners had proved their case, namely, a substantial change in religious doctrine, as the law then stood and their right to retain possession of the church property.

Hull, 393 U.S. 440, came down on January 27, 1969, reversing the Georgia Supreme Court and holding that "departure from doctrine" investigations and decisions by the courts violated the First Amendment, and that church property disputes must be determined by "neutral principles of law developed for use in *all* property disputes." 393 U.S. 440, 447. (Italics supplied.)

On February 28, 1969, final arguments were presented to the trial court, turning largely on the federal constitutional effect of *Hull*, *supra*, 393 U.S. 440.

The trial court issued its memorandum opinion (Appendix A) on March 12, 1969, stating there was abundant proof of substantial changes in doctrine of the United

Presbyterian Church, and that it departed from its historic centuries-old presbyterian position. However, the trial court ruled that the plaintiffs were entitled to the relief they sought, believing that this result was in accord with United States Supreme Court decisions.

Findings of Fact, Conclusions of Law (Appendix D) and Judgment (Appendix E) were signed by the trial court on May 9, 1969, granting the church property to respondents and removing Dr. Rohrbaugh as pastor.

The Findings of Fact go into great detail on the religious procedures followed by Presbytery under church law to acquire possession and to remove the pastor. The trial court found, over the denial in petitioner's answer, that the national church was a hierarchical church with control over the property of all churches in the denominations. (See Appendix D.)

Keenly aware of the importance of the case and of the chaos that would result if immediate transfer were made and thereafter this judgment was reversed, the trial court suspended and stayed the judgment during the pendency of the appeal upon the defendants' filing a bond as security for plaintiffs' rights, which bond was duly filed.

On appeal to the Supreme Court of the State of Washington, the federal constitutional issue in accordance with court rule was stated as follows:

> "Can civil courts in the United States enforce ecclesiastical decisions under the First and Fourteenth Amendments to the Federal Constitution, requiring separation of church and state?" (Appellants Brief, p. 17; Appendix F.)

In its opinion (Appendix B) the Supreme Court of the

State of Washington directly ruled on the federal question and expressly followed *Watson v. Jones*, 13 Wall (80 U.S.) 679 (1871), and construed it to hold that civil courts can enforce ecclesiastical practices and decisions of what it determined on the finding of fact in the record (made in the face of petitioners denial in their answer) to be an "hierarchical church structure"; that *Hull*, 393 U.S. 440, had approved *Watson v. Jones* in this respect in its entirety (Appendix B; that it would not follow the second Georgia decision made after remand by this court, *viz.*, 225 Ga. 259, 167 S.E.2d 685 (1969), awarding title to the local churches where the legal title resided (certiorari denied by this court, 396 U.S. 1041 (1970)); and that even if one looked at the title question, the record title is in the Laurelhurst Church corporation, "which by its bylaws is subject to the discipline of the United Presbyterian Church, and is governed by a session which must act in accord with that discipline."

On this basis the Supreme Court of the State of Washington affirmed the judgment below, to review which this writ of certiorari is sought.

ARGUMENT

I.

The Court Below Unconstitutionally Enforced An Ecclesiastical Decision Based on Procedural Steps Taken Under A Religious Book of Order.

The Supreme Court of the State of Washington erred in construing *Watson v. Jones*, 13 Wall 679 (1871), to require it, in church property disputes, to enforce the ecclesiastical decisions of a church tribunal determined by it on disputed findings to be an "hierarchical structure,"

made under an elaborate theological Book of Order (Exhibit 1)—a strictly religious document by self-description based exclusively on the Scriptures (See Appendix F)—and claiming that this judicial action was supported by the recent decision of this court (*Hull*, 393 U.S. 440)—a patent misconstruction.

The Book of Order (Exhibit 1) is a strictly religious document. See excerpts set forth in Appendix F.

Hull stands for the position that courts cannot in the light of the First Amendment decide "departure from doctrine questions, but must rest church property decisions on "neutral principles of law, developed for use in all property disputes." (*Hull*, 393 U.S. 440, 449)

Hull did *not* involve the question of acceptance of the ecclesiastical decisions of a church judicatory. *Hull* merely approved *Watson* in the narrow aspect that courts must not decide questions of religious doctrine. *Hull* nowhere said that courts must accept the decisions of an ecclesiastical tribunal in church property disputes.

II.

The Court Below Did Not Follow "Neutral Principles of Law Developed for Use in All Property Disputes."

Decisions of an ecclesiastical tribunal made according to religious laws and procedures are obviously not "neutral principles of law developed for use in *all* property disputes." *Hull*, 393 U.S. 449, 449. (Italics supplied.) "Neutral principles of law developed for use in all property disputes," quite plainly means such things as principles relating to title, applicable statutes, etc., all strictly *secular* rules of law relating to property disputes.

74 *Yale Law Journal* 1113, 1137 (1963), rightly says:

> "The most objectionable rule from an 'absolute wall' point of view is strict adherence to *Watson v. Jones*. This rule gives the church plenary power over church property and allows the church to use the courts to enforce its decrees."

This statement is peculiarly applicable here.

For almost two centuries courts of equity in England and the United States (prior to *Hull*, 393 U.S. 440 (1969) in church property disputes have sustained the position of those who adhered to doctrine as being in the right, and those who departed from doctrine as being in the wrong, regardless of majority or minority. This was first authoritatively decided by the House of Lords in *Craigdallie v. Aikman*, 2 Bligh 529 (1820).

In our case victory has been given by the Supreme Court of the State of Washington to the party in the wrong under traditional equitable principles and denied victory to those in the right under those equitable principles.

Blind adherence to *Watson* gives the national church plenary power even if it has substantively changed doctrine and forces all churches to accept the new Confession of 1967 or leave.

The same *Yale Law Journal* article on the same page says:

> "The 'formal title' rule is perhaps the least objectionable from this point of view, since the state need not deal with either the theology or the administrative rules of the church, but looks solely to the locus of the title."

In our case the Supreme Court of the State of Washington made a literal application of *Watson v. Jones*, thus

applying "the most objectionable rule", and ignoring completely the sharp limitations put on *Watson v. Jones* by this court in *Hull, supra*, 393 U.S. 440, 396 U.S. 1041, and in *Church of God, supra*, 393 U.S. 528, 396 U.S. 367.

The formal title rule is supported not only by the *Yale Law Journal* writer, but by the Supreme Court of Georgia in its second decision (certiorari denied 396 U.S. 1041) and still more recently in *Merryman v. Price*, ... Ind. ....., 259 N.E.2d 883 (June, 1970) (also quoted in the Reply Brief to the Supreme Court of the State of Washington, p. 4). The Indiana court upheld an award to the local church over the claim of the general church. It rejected the application of *Watson v. Jones*. It then stated (p. 893):

> "The above cases together with the *Mary Elizabeth Hull* case strongly indicated a preference for what has been described 'formal title' approach to church property controversies. See Comment, 54 Iowa L. Rev. 899, 907, (1969). Under this approach the title holder of property has the right to determine the use of the property with neither theology nor administrative church law relevant."

III.

The Court Below Determined That the National Presbyterian Church Is a "Hierarchical Structure" And So Unconstitutionally Made A Doctrinal Decision.

The Supreme Court of the State of Washington violated the First Amendment in first determining from the theological evidence in the record (the Book of Order, Exhibit 1; see Appendix F), disputed in Petitioner's Answer, that the national Presbyterian Church here involved is an "hierarchical structure," which in and of itself required the court to examine and construe religious doctrine and make a doctrinal decision.

The court was warned by petitioners not to make this constitutional error by the filing before argument, as an additional authority to be considered, this statement from the article by Professor Robert C. Casad, in XXVII *Washington and Lee Law Review* 44-69 (1970), carefully analyzing the meaning and narrow scope of *Hull*, 393 U.S. 440 (1969), where he said (p. 68):

> "Justice Brennan's comment apparently excludes the *Watson* approach in such cases, for to classify a church as congregational or hierarchical inevitably involves an inquiry into religious law, usage, doctrine or polity."

Professor Casad further points out in his article (p. 68) that where Mr. Justice Brennan said in *Hull*, 393 U.S. 440, 447, that the "court converted the principle of Watson . . . into a constitutional rule" he was referring "only to the philosophical principle underlying the *Watson* decision: the principle that civil courts should not undertake to decide religious questions."

In determining, against denial in Petitioners' answer, that the national church here involved is an "hierarchical structure" the court violated the First Amendment by making a doctrinal decision.

IV.

The Court Below Erred in Holding That *Hull* Follows *Watson v. Jones*.

The Supreme Court of the State of Washington erred in deciding that *Hull*, *supra*, 393 U.S. 440, follows *Watson v. Jones* in holding that civil courts can enforce ecclesiastical decrees. (Appendix B) No such question was involved in *Hull*, which involved only whether civil courts could decide questions of religious doctrine.

V.

The Court Below Unconstitutionally Involved Title in Church Law and Discipline.

The Supreme Court of the State of Washington violated the First Amendment in holding that (Appendix B)

> "The record title is in the First United Presbyterian Church of Seattle, which by its bylaws is subject to the discipline of the United Presbyterian Church and is governed by a session which must act in accord with that discipline."

By this reasoning through the medium of internal church law and practices the court undertakes to divest the petitioner Laurelhurst Church corporation, governed by its statutory trustees, of its property.

Hull, supra, 393 U.S. 440, 449, specifically prohibits "resolution by civil courts of controversies over religious doctrine and *practice*." (Italics supplied.) The Washington court has unconstitutionally invaded the area of church law and *practice*.

VI.

The Decision of the Court Below Denies Petitioners Their Freedom of Religion.

The decision of the Supreme Court of the State of Washington unconstitutionally denies petitioners their freedom to religion to adhere to the historic Westminster Confessional documents and to enjoy their church property in so doing.

In *Maryland & Virginia Eldership v. Church of God*, 396 U.S. 367 (1970), this court, for want of a substantial federal question, dismissed an appeal from 254 Md. 162, 254 A.2d 162 (1969).

In that case, in upholding the right of local congregations to withdraw from the Eldership, the Supreme Court of Maryland said (254 A.2d 162, 170):

> "We do not understand that the decision in *Hull* requires the State equity courts to provide effective discipline and control of a denomination over its clergy or to maintain that denomination's 'purity of doctrine.' As we see it, this would be 'establishment of religion' with a vengeance, and under neither the Maryland law nor under the prohibitions of the First Amendment are we permitted to do this. We have no right to prevent the local congregations from separating from the Eldership and from refusing to accept the ministers appointed by the Eldership. To do this would deny to the members of the local congregation *their* freedom of religion and would in effect put the judicial power of the State behind the enforcement of the doctrine and discipline of the Eldership thus, in effect, 'establishing' the religion promulgated by the Eldership. This we are forbidden to do." (Emphasis in original)

So here the decision of the Supreme Court of the State of Washington unconstitutionally interferes with petitioners' freedom of religion in that it puts the "judicial power of the state behind the enforcement of the doctrine and discipline" of the respondent National Presbyterian Church. Here the Supreme Court of the State of Washington enforces the new Confession of 1967 and judicially "establishes" it.

NATIONAL IMPORTANCE OF THE CASE

The state court has decided a federal question "in a way probably not in accord with applicable decisions of this court" (Rule 19) in a case of great national importance.

There are many thousands of Presbyterian churches, and probably others, affected by *Watson v. Jones*, 13 Wall

679 (1971), and its interpretation in *Hull*, 393 U.S. 440, 396 U.S. 1041, and *Church of God*, 393 US.. 528, 396 U.S. 367, dismissing appeal.

By enforcing the ecclesiastical decree of the national church and judicially establishing the new Confession of 1967, the state court here has set a precedent which, unless reviewed and corrected here, will plague many thousands of churches nation-wide for years to come.

The new "Confession of 1967" is to Petitioners a secular religion, antithetical to historic Christianity as set forth in the Westminster standards. With the trend to a secular religion so strong in America today, now established by the decision of the Washington Supreme Court, congregations by the tens of thousands are unconstitutionally locked into this trend despite their desire to continue in the historic Christian faith as set forth in the Apostles Creed, in the Nicene Creed and the great confessions of the Reformation.

A review and reversal here will restore religious freedom to millions.

We respectfully pray that the Writ of Certiorari issue.

Respectfully submitted,

SCHWEPPE, DOOLITTLE, KRUG & TAUSEND
ALFRED J. SCHWEPPE
PETER E. PAGET
Attorneys for Petitioners

APPENDIX A

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

THE PRESBYTERY OF SEATTLE, INC., a non profit Washington corporation, and WILLIAM H. GOLEEKE, being a member of the Laurelhurst United Presbyterian Church, and representing all others similarly situated,

Plaintiffs,

vs.

JAMES R. ROHRBAUGH, LAURELHURST UNITED PRESBYTERIAN CHURCH, INC., a Washington non profit corporation, and ALLEN PRIER, chairman of the Board of Trustees and representing all other Trustees similarly situated, and RALPH SCHREINER, R. W. SPRAGUE, S. R. HANSEN, C. W. GIBBS, R. T. DOWNS, JERRY JOURNEY, EARL E. McMILLAN, FRANK JOHNSON, KARL HOUSE, ARNOLD J. CARLSON, DR. DOO SOO SUH, PHIL GALLAHER, DR. KIRK DOUGLAS, GLEN CARSON and EWART SUFFEL, being the Elders and members of the Session and some of the withdrawing members of the Laurelhurst Church and representing all others similarly situated, as set forth in the Complaint,

Defendants.

No. 691249

Memorandum Opinion

MR. DOUGLAS P. BEIGHLE of HOLMAN, PERKINS, COIE, STONE & OLSEN, and
MR. ROBERT A. YOTHERS,
Attorneys for Plaintiffs;

MR. ALFRED J. SCHWEPPE of SCHWEPPE, DOOLITTLE, KRUG & TAUSEND,
Attorney for Defendants.

This is a petition by the Presbytery of Seattle and

William H. Goleeke, a member of the Laurelhurst United Presbyterian Church, against Dr. James R. Rohrbaugh, pastor of said Laurelhurst church, the Board of Trustees and Elders of the church, and the individuals who comprise the Session of the church, requesting the court to enjoin defendant Dr. Rohrbaugh from acting as pastor of the Laurelhurst church or in any way interfering with the administrative commission appointed by plaintiff Presbytery functioning as the Session of the Laurelhurst church. Plaintiffs have also asked that the Elders and Trustees of the Laurelhurst church be restrained from in any way transferring or disposing of the property of said church, from interfering with the administrative commission appointed by the Presbytery functioning as the Session of the church, and for such other equitable relief as to the court may seem just and proper.

The General Assembly of the United Presbyterian Church of the United States, the supreme governing body of the church, met at Portland, Oregon for its annual meeting in 1967. At this meeting it is claimed by defendants, proof of which is abundant, that substantial changes were made in the doctrine of the church, that the confession of 1967 departed from its historic, centuries-old Presbyterian position and Statements of Faith and that political and social pronouncements were made to all of which loyal, conservative members of the church, and more particularly, the pastor and members of the Laurelhurst church, could not in good conscience abide.

Following the adoption by the General Assembly of the confession of 1967, the members of the congregation of the Laurelhurst church met to discuss the action of the General Assembly and overwhelmingly voted to withdraw from the mother church. (The congregation is estimated

to number about 600—roughly 200 attended the meeting and the vote was 183 to 11 to withdraw.)

Dr. Rohrbaugh and the members of his church made it known that it was their intention not to obey the constitution of the Presbyterian Church and that Seattle Presbytery had no jurisdiction over him as pastor or over his congregation or the property of the church.

Pursuant to the Book of Order and Book of Discipline, plaintiff Seattle Presbytery cited Dr. Rohrbaugh to appear on a day certain before a meeting of the Presbytery to show cause why he should not be removed as pastor of the Laurelhurst church; upon Dr. Rohrbaugh's refusal to appear before Presbytery he was removed as pastor, and the pulpit of the Laurelhurst church was declared vacant. No appeal has been taken by either Dr. Rohrbaugh or the Laurelhurst church through the next higher judicatory, the Synod of Washington-Alaska, as provided in the Book of Discipline and the Book of Order. In the Presbyterian Church the structure of tribunals is: (1) The Church Session, composed of Elders of the local church; (2) the Presbytery, composed of several churches in a certain geographical area (Seattle Presbytery comprises sixty-four churches); (3) the Synod (Washington-Alaska Synod) and (4) the General Assembly, the supreme governing body of the church.

All the Ruling Elders of the Laurelhurst church, with one exception, stated by letter to plaintiff Presbytery that Presbytery has no authority over them (a Session is composed of the Ruling Elders elected by the congregation) and recognized no validity to any action taken by plaintiff Presbytery concerning Pastor Rohrbaugh or the congregation.

Thereafter, pursuant to the Book of Order, the plaintiff Presbytery elected an administrative commission which was granted the full powers of Session, said commission to take the place of the then existing Session. No appeal was taken against this action of removal to the next higher judicatory, the Synod of Washington-Alaska.

Defendant Laurelhurst church was dedicated as the First United Presbyterian Church in January 1893 under the Oregon Presbytery. It was organized as a mission church, becoming self-supporting in 1903. The first church was located at Sixth Avenue and Seneca Street, the congregation moving to another church building at Fourteenth Avenue and East Spring Street in 1908, and finally to its present location in the Laurelhurst section of Seattle, and the name was changed to Laurelhurst United Presbyterian Church.

Article III of the Articles of Incorporation of the Laurelhurst Church recites:

> "The object and purpose of this corporation is to maintain religious services and stated meetings for worship of Almighty God and to cause to be preached and propagated in said city of Seattle and elsewhere the Gospel of Jesus Christ and the teachings of the Holy Spirit and particularly the belief and the practice adhered to by the denomination known as the United Presbyterian Church of North America; and to acquire, by gift, purchase or otherwise hold, manage, mortgage, lease, sell, convey and dispose of property of every kind and description both real and personal of said Society and of this corporation for the sole end of carrying out and securing the foregoing objects and purposes."

Article IV of said Articles specifically sets forth that the Pastor, Elders and Trustees are to be selected in ac-

cordance with the constitution of the United Presbyterian Church of North America, said officers to have only the authority granted by the constitution.

In 1958 the United Presbyterian Church of North America and the Presbyterian Church in the United States of America merged to form the United Presbyterian Church of the United States. All parties concerned herein have accepted said United Presbyterian Church of the United States as the lawful successor of both merged churches.

The testimony in this case was heard a year ago, and it was agreed that final arguments and a decision on the merits would be withheld until such time as the Supreme Court of the United States decided the case of *Presbyterian Church in the United States vs. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, then on appeal from the State of Georgia, 224 Ga 61, 159 SE2d 690.

We were hopeful also that through the assistance of two prominent members of the Seattle bar, Messrs. William F. Devin and Arthur E. Simon, both devout Presbyterians, we might be able to effect a reconciliation of the parties. To them for acting as friends of the court, I am deeply grateful. Their untiring efforts and devotion to Christian duty may not have been in vain.

Now that the Supreme Court has rendered its decision in the Georgia case, it is apparent that the court has reaffirmed the principles of law laid down in that early case of *Watson v. Jones*, 80 U.S. 679, 20 L.Ed. 666 (1871), in which case the court held in favor of the faction that remained loyal to the United Presbyterian Church in the United States. These principles in *Watson* have been cited with approval in several subsequent United States Supreme

Court cases, namely, *Gonzales vs. Roman Catholic Archbishop of Manila*, 280 U.S. 1, 74 L.Ed. 131 (1929), which was to the effect that in the absence of fraud, collusion or arbitrariness the decision of proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive because the parties in interest made them so by contract or otherwise.

In the recent Georgia case I quote from Mr. Justice Brennan's opinion (pp. 663-664):

> "It is of course true that the State has a legitimate interest in resolving property disputes, and that a civil court is a proper forum for that resolution. Special problems arise, however, when these disputes implicate controversies over church doctrine and practice. The approach of this Court in such cases was originally developed in *Watson v. Jones*, 13 Wall 679, 20 L.Ed 666 (1872), a pre-Erie v. Thompkins diversity decision decided before the application of the First Amendment to the States but nonetheless informed by First Amendment considerations. There, as here, civil courts were asked to resolve a property dispute between a national Presbyterian organization and local churches of that organization. There, as here, the dispute arose out of a controversy over church doctrine. There, as here, the Court was asked to decree the termination of an implied trust because of departures from doctrine by the national organization. The Watson Court refused, pointing out that it was wholly inconsistent with the American concept of the relationship between church and state to permit civil courts to determine ecclesiastical questions. In language which has a clear constitutional ring, the Court said
>
> > 'In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is con-

> ceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect . . . All who unite themselves to such a body [the general church] do so with an implied consent to [its] government, and are bound to submit to it. But it would be a vain consent, and would lead to the total subversion of such religious bodies, if anyone aggrieved by one of their decisions could appeal to the secular courts and have them [sic] reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.' 13 Wall, at 728-729, 20 L.Ed at 676-677.

"The logic of this language leaves the civil courts *no* role in determining ecclesiastical questions in the process of resolving property disputes."

Other cases cited with approval by the Supreme Court in the recent Georgia case are *Trustees of Pencador Presbyterian Church vs. Gibson*, 22 A.2d 782, (Del. 1941); *St. John's Presbytery vs. Central Presbyterian Church of St. Petersburg*, 102 So.2d 714 (Fla. 1958); *Bramlett vs. Young*, 93 SE2d 883 (S.C. 519) (Footnote 5); and *Kedroff vs. St. Nicholas Cathedral*, 344 U.S. 94, 97 L.Ed. 120 (1952).

In the Georgia case the United States Supreme Court concluded (p. 666):

> "Thus, the departure-from-doctrine element of the Georgia implied trust theory requires the civil court to determine matters at the very core of a religion—the interpretation of the particular church doctrines and the importance of those doctrines to the religion. Plainly, the First Amendment forbids civil courts from playing such a role."

In the above-cited *St. John's Presbytery* case, that court states:

> "This is an abounding array of authorities but they all treat some phase of litigation growing out of church schisms in which both factions lay claim to the church property. When the church is representative, republican or episcopal in government, the authorities uniformly hold that the church property whether held by an express or an implied trust cannot be diverted from the parent church by those who withdraw from it and form a separate denomination. It matters not whether those who withdraw from the mother church constitute a majority or a minority faction, the church property remains with the mother church. There are exceptions to this rule when the schism occurs in a church whose government is congregational in form like the Baptist or Congregational denominations but in churches bound together by associated ecclesiastical government when the local church is obedient to a larger or more important religious organization and is governed by it, such as the Presbyterian, Catholic, Episcopal, Methodist and Lutheran. I have found no exception to this rule. They could not function under any other rule." 102 So.2d at 718.

I quote from *Bramlett* above cited, page 883, which seems to me to be the answer to the position taken by defendants Dr. Rohrbaugh and his congregation in the instant case:

> "The appellants cannot now comprise McCarter Presbyterian Church because they have seceded and disassociated themselves by their voluntary action and vote, from any connection with Enoree Presbytery and the Presbyterian Church in the United States. They are now engaged in worship as an independent church. The appellants assert that even though they are no longer affiliated with the Presbyterian Church in the United States, yet they contend that they maintain and observe the doctrine and tenets of the church, and assert also that they are still a Presbyterian Church. There can be no Presbyterian Church in the

> United States without an affiliation with a Presbytery. A Presbyterian Church can be organized only by authority of a Presbytery. A minister cannot be employed or called to serve a Presbyterian Church without the approval of the Presbytery, of which such church is a member." 93 S.E.2d at 883.

To the same effect are decisions of our own Supreme Court. In the case of *Wilkeson vs. St. Luke's Parish*, 176 Wash. 377 (1934) the court stated (p. 384-5):

> "In the absence of fraud, where the right of property in a civil court is dependent on the question of doctrine, discipline, ecclesiastical law, rule or custom, or church government, and that has been decided by the highest tribunal within the organization to which it has been carried, the civil court will accept that decision as conclusive, and be governed by it in its application to the case before it."

In *Hoffman vs. Tacton View Methodist Church*, 33 Wn.2d 716 (1949), p. 728, our court cited *Wilkeson* with approval and stated:

> "It is our opinion that the Methodist Church falls within the third group listed in *Watson v. Jones, supra*. Its organization is Presbyterian in form and not Congregational. As a result, it is our opinion that local churches are only parts of the larger body, and no local Methodist church may convert its property to a use not authorized by the superior church government."

In *Hoffman* the court cited with approval the case of *Presbytery of Bismarck vs. Allen*, 22 N.W.2d 625 (N.D. 1946), which held that individual members of a congregation have no property rights in the church property.

Reluctantly, for my sympathies are with Pastor Rohrbaugh and his congregation, I must conclude that plaintiffs are entitled to the relief sought, and it is so ordered. The status quo will be maintained until appropriate orders are

signed. In the event of appeal I will consider upon timely notice of such a request for a stay until the supreme court has assumed jurisdiction—this because of the serious outcome of the appropriate order I shall feel obliged to sign.

DATED this 12th day of March, 1969.

s/ WILLIAM J. WILKINS,
Judge

APPENDIX B

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

THE PRESBYTERY OF SEATTLE, INC., a non profit Washington corporation, and WILLIAM H. GOLEEKE, being a member of the Laurelhurst United Presbyterian Church, and representing all others similarly situated,

Respondents,

v.

JAMES R. ROHRBAUGH, LAURELHURST UNITED PRESBYTERIAN CHURCH, INC., a Washington non profit corporation, and ALLEN PRIER, chairman of the Board of Trustees and representing all other Trustees similarly situated, and RALPH SCHREINER, R. W. SPRAGUE, S. R. HANSEN, C. W. GIBBS, R. T. DOWNS, JERRY JOURNEY, EARL E. MCMILLAN, FRANK JOHNSON, KARL HOUSE, ARNOLD J. CARLSON, DR. DOO SOO SUH, PHIL GALLAHER, DR. KIRK DOUGLAS, GLEN CARSON and EWART SUFFEL, being the Elders and members of the Session and some of the withdrawing members of the Laurelhurst Church and representing all others similarly situated,

Appellants.

No. 41167
En Banc

Filed June 3, 1971

The United Presbyterian Church is an association of local Presbyterian churches governed by a hierarchy which includes, in ascending order, the Session (composed of the pastor and the elders of the local church), the Presbytery (composed of all the pastors and at least one elder from each of the churches within a defined district), the Synod (composed of representative pastors and elders from

the Presbyteries within a geographical region), and the General Assembly (composed of delegations of pastors and elders from all the Presbyteries). These governing bodies are called "judicatories."

The Laurelhurst United Presbyterian Church of Seattle had on its rolls approximately 600 members. The pastor and 183 members, including the trustees and all but one of the elders (the appellants herein), feeling aggrieved by certain doctrinal changes which were adopted in 1967 by the United Presbyterian Church as a part of its constitution, voted to withdraw as a body.

They requested that the Presbytery of Seattle strike the name of the church from its rolls and authorize them to use the church property for their own purposes. Their requests were refused and the Presbytery further advised that there was no authority in the constitution for the members of a church to withdraw as a body. The appellant Rohrbaugh was removed as minister and the Session was dissolved by the Presbytery, which appointed an administrative commission having the powers of Session to administer the affairs of the church for those members who had not withdrawn.

Although the constitution of the church provides for appeals to the judicatories of the Washington-Alaska Synod and the General Assembly of the church, no appeal was taken.

Instead, the appellants, who had apparently comprised most of the active membership of the church, refused to allow the administrative commission to enter the church or to operate with the powers of Session, and the appellant Rohrbaugh continued to act as pastor of the church.

This action was instituted by the Presbytery to obtain an adjudication of its right to control the use and disposition of the church property. That relief was granted by the trial court, which issued an order restraining and enjoining the appellants from interfering with the respondent Presbytery's use and control of the property of the church or diverting that property, and which ordered an accounting by the appellants of all the funds and properties of the church and delivery by them of all the property of the church, including its books and records and the deed to the church property.

The appellants first suggest that the respondents have no standing to bring this action, citing as authority for this proposition provisions in the church constitution which disclaim for the judicatories any civil jurisdiction. Nowhere in these provisions do the judicatories disclaim their right to petition the courts for relief in civil controversies. The provisions simply acknowledge what is a fact without that acknowledgment—the jurisdiction of church judicatories is ecclesiastical and not civil.

Furthermore, as the respondents point out, one of them is a member of the Laurelhurst United Presbyterian Church, representing in a class action all other members who did not withdraw from membership, and their interest in preserving the church property is not questioned. We disagree with the appellants' contention that the respondents do not have standing to bring this action.

Turning to the merits, we find that the appellants rest their appeal upon a contention that they are the "record titleholders" of the property and that no further inquiry need be made by the courts to determine the question of

who is entitled to use and control the property. It should be noted at this point that the record title is in the church. The appellants evidently conceive that they comprise the church; and for their claim to a proprietary interest they rely heavily upon a recent Georgia case, *Presbyterian Church in the United States v. Eastern Heights Presbyterian Church*, 225 Ga. 259, 167 S.E.2d 658 (1969).

The opinion in that case appears to be the final disposition of a case which arose in Georgia upon facts very similar to those involved in this case. The Georgia trial court submitted the case to the jury with instructions to determine whether the constitutional changes made by the entire church in 1967 constituted a "substantial departure" from the doctrine espoused by that church when the local church was formed. The jury found that indeed such a departure had occurred, and the trial court ruled, applying Georgia law, that the local church did not hold title to the property upon an implied trust for the nationwide church.

This decision was affirmed by the Supreme Court of Georgia. The Presbyterian Church in the United States petitioned the United States Supreme Court for certiorari, contending that the courts of Georgia had violated the "establishment clause" of the first amendment to the United States Constitution. Certiorari was granted and the Supreme Court reversed, holding that

> the departure-from-doctrine element of the Georgia implied trust theory requires the civil court to determine matters at the very core of a religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion. Plainly, the First Amendment forbids civil courts from playing such a role.

Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 21 L.Ed.2d 658, 89 S. Ct. 601 (1969).

However, the United States Supreme Court did not hold that civil courts have no power to determine controversies concerning church property. It expressly approved the holding of *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871), wherein the court refused to decree the termination of an implied trust because of departures from doctrine by the national organization. The court in *Watson v. Jones, supra*, held that members who withdrew from a Presbyterian church, even though they included members of the Session and the trustees, forfeited any right to use the church property.

The church involved in that action was Presbyterian, having precisely the same hierarchical structure as that involved in this action. There legal title was vested in the trustees of the local church; here it is vested in a corporation having trustees, but in both cases, under the church constitution, the right to control the use of the property is vested not in the trustees but in the Session, the Session in turn being subject to control by the Presbytery, the Presbytery by the Synod and the Synod by the General Assembly. The United States Supreme Court took notice of all these matters of church structure, obviously not regarding them as ecclesiastical or doctrinal in nature, but rather matters of agreement among the members concerning their self-government, which it was necessary to examine in order to determine the right to control the property.

The doctrinal dispute in that case arose between certain members of the local church and others who favored the

position of the national hierarchy upon the question of slavery, the national having taken a doctrinal position against the institution of slavery which was offensive to one faction of the local church. The factionalism spread to the Presbytery and to the Synod of Kentucky. The parties turned to the courts for resolution of their disagreement about the right to control and use the church property.

The United States Supreme Court in the *Hull* church case quoted the following significant language from *Watson v. Jones, supra,* describing it as language having a "clear constitutional ring":

> "In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. . . . All who unite themselves to such a body [the general church] do so with an implied consent to [its] government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them *[sic]* reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for." 13 Wall., at 728-729.

(Footnote omitted.) 393 U.S. at 446.

It would appear certain that the United States Supreme Court approved the rule laid down in *Watson v. Jones, supra,* that the decision of the highest tribunal of a hier-

archical church to which an appeal has been taken should be given effect by the courts in a controversy over the right to use church property. Nevertheless, upon remand the Georgia court refused to apply that rule. It also refused to apply the implied trust doctrine approved by the United States Supreme Court in *Watson v. Jones, supra,* and instead construed the opinion in the *Hull* church case to mean that the trust theory, as well as the theory of a "condition of the trust" must be abandoned.

We do not find such a holding in the opinion of the United States Supreme Court in the *Hull* case. Nor are we impressed with the rationale employed by the Georgia court in reaching its decision. That court said that the right to use the property rested in the holder of the record title. If we assume that the holder was a corporation, as in this case, and that the members of the corporation were members of the congregation of the named Presbyterian church, we are faced with the conclusion that, under the constitution of the church, only the loyal members of the church could be regarded as members of the congregation.

If the court meant to hold, as the appellants would have us assume, that the property belonged to those former members who had withdrawn from the church, it would seem that the decision falls short of its purpose. There is in it no explanation of the legal route by which title passed from the corporation to the dissidents.

Finally, if the court meant to hold that title was in the trustees, it failed to recognize or resolve the question: what was the nature of their trust? It would appear inescapable that the trust was defined by the provisions of

the church constitution, wherein their offices and duties were created.

The United States Supreme Court denied a petition for certiorari to review this decision of the Georgia court. Such a refusal, of course, does not denote approval of the decision of the state court.

Be that as it may, we are of the opinion that there is no necessity to look to the courts of Georgia for guidance in the disposition of this case. This court has adopted the rule of *Watson v. Jones, supra*, in cases of this kind, having held in *Hervian v. Plummer*, 20 Wash. 363, 55 P. 315 (1898) and *Hoffman v. Fiction View Community Methodist Episcopal Church*, 33 Wn.2d 716, 207 P.2d 699 (1949), that, in the absence of fraud, where a right of property in an action before a civil court depends upon a question of doctrine, ecclesiastical law, rule or custom, or church government, and the question has been decided by the highest tribunal within the organization to which it has been carried, the civil court will accept that decision as conclusive. The propriety of this rule was again recognized in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, supra*. We see no reason to abandon it.

The appellants are not, as they contend, the record titleholders of the property. The record title is in The First United Presbyterian Church of Seattle,[1] a corporation which by its bylaws is subject to the discipline of the United Presbyterian Church, and is governed by a Session which must act in accord with that discipline. The appellants have withdrawn from that church, but according to

1. The former name of the Laurelhurst United Presbyterian Church

the decision of the Presbytery of Seattle, from which no appeal was taken, they had no right to withdraw from the church as a body and take with them the name of the church and its property. The pastor, the trustees, and the members of the Session who withdrew forfeited their right to govern the affairs of the church when they did so, according to the decision of the highest tribunal to which an appeal was taken, and consequently the appellants have no right to control the use of the property.[2]

The decree is affirmed.

s/ ROSELLINI, J.

We concur:

HAMILTON, C. J.
FINLEY, J.
HALE, J.
NEILL, J.
STAFFORD, J.
WRIGHT, J.
DONWORTH, J. Pro Tem

2. *See also Apostolic Faith Mission of Portland, Ore., v. Christian Evangelical Church*, 55 Wn 2d 304, 347 P.2d 1059 (1960), holding that members of a church forfeit any interest they may have in the beneficial use of property when they withdraw from membership.

APPENDIX C

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

THE PRESBYTERY OF SEATTLE, INC., a non-profit Washington corporation, and WILLIAM H. GOLEEKE, being a member of the Laurelhurst United Presbyterian Church, and representing all others similarly situated,

Respondents,

vs.

JAMES R. ROHRBAUGH, LAURELHURST UNITED PRESBYTERIAN CHURCH, INC., a Washington non-profit corporation, and ALLEN PRIER, chairman of the Board of Trustees and representing all other trustees similarly situated, and RALPH SCHREINER, R. W. SPRAGUE, S. R. HANSEN, C. W. GIBBS, R. T. DOWNS, JERRY JOURNEY, EARL E. MCMILLAN, FRANK JOHNSON, KARL HOUSE, ARNOLD J. CARLSON, DR. DOO SOO SUH, PHIL GALLAHER, DR. KIRK DOUGLAS, GLEN CARSON and EWART SUFFEL, being the Elders and members of the Session and some of the withdrawing members of the Laurelhurst Church and representing all others similarly situated,

Appellants.

Remittitur
No. 41167
King County
No. 691249

The State of Washington to:

The Superior Court of the State of Washington in and for King County.

This is to certify that the opinion of the Supreme Court of the State of Washington filed on June 3, 1971, became

the final judgment of this court in the above entitled case on July 23, 1971. This cause is remitted to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to Rule 55 on Appeal, costs are taxed as follows:

Six hundred forty-five and 72/100 dollars ($645.72) in favor of respondents and against appellants and against appellant's surety, The General Insurance Company of America, not to exceed the amount of the surety's bond.

The petition for rehearing was denied by order dated July 23, 1971.

cc; Schweppe, Doolittle, Krug & Tausend
Mr. Peter E. Paget

Perkins, Coie, Stone, Olsen & Williams
Mr. Douglas P. Beighle

Mr. Malcolm McLeod
Court Reporter

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Olympia, this 23rd day of July, A.D. 1971.

WILLIAM M. LOWRY
Clerk of the Supreme Court,
State of Washington.

APPENDIX D

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

THE PRESBYTERY OF SEATTLE, INC., a non-profit Washington corporation, and WILLIAM H. GOLEEKE, being a member of the Laurelhurst United Presbyterian Church, and representing all others similarly situated,

Plaintiffs,

vs.

JAMES R. ROHRBAUGH, LAURELHURST UNITED PRESBYTERIAN CHURCH, INC., a Washington non-profit corporation, and ALLEN PRIER, chairman of the Board of Trustees and representing all other Trustees similarly situated, and RALPH SCHREINER, R. W. SPRAGUE, S. R. HANSEN, C. W. GIBBS, R. T. DOWNS, JERRY JOURNEY, EARL R. MCMILLAN, FRANK JOHNSON, KARL HOUSE, ARNOLD J. CARLSON, DR. DOO SUH, PHIL GALLAHER, DR. KIRK DOUGLAS, GLEN CARSON and EWART SUFFEL, being the Elders and members of the Session and some of the withdrawing members of the Laurelhurst Church and representing all other similarly situated, as set forth in the Complaint,

Defendants.

No. 691249

Findings of Fact and Conclusions of Law

The above-entitled matter having come on for trial before the Honorable William J. Wilkins, Judge of the above-entitled Court, on January 31, 1968, plaintiffs appearing

personally and by their attorneys of record, defendants appearing personally and by their attorneys of record, the Court having heard the testimony of witnesses and considered the exhibits and the argument of counsel, now makes the following

FINDINGS OF FACT

I.

That plaintiff The Presbytery of Seattle, Inc. is a non-profit Washington corporation, with its principal situs in King County, State of Washington. That it is a corporation authorized by and formed under the constitution of the United Presbyterian Church in the United States of America. That the plaintiff Presbytery of Seattle is authorized to represent the United Presbyterian Church in the United States of America in all temporal and civil matters and is the ecclesiastical judicatory body having the authority over the defendants herein named. That the plaintiff William H. Goleeke is a member of the Laurelhurst United Presbyterian Church and of the United Presbyterian Church in the United States of America and was representative of a group of other members of the said Laurelhurst United Presbyterian Church and the United Presbyterian Church in the United States of America.

II.

That the plaintiff Presbytery is the superior judicatory and assembly and has jurisdiction over 64 particular churches in the Seattle area. That the defendant Laurelhurst United Presbyterian Church is one of the churches in and under the jurisdiction of plaintiff Presbytery.

III.

That the United Presbyterian Church in the United States of America is a religious organization which provides that its lay members and clerical members are organized within the Presbyterian Church into particular churches. That the structural tribunals are:

1. The church "session", composed of elders of the local church, over which the pastor presides as moderator.

2. The next higher tribunal is the "Presbytery", composed of several churches in a certain geographical area. The Presbytery of Seattle is composed of all the ministers and the elder representatives from all of the 64 particular churches within the boundary of Presbytery of Seattle.

3. Presbyteries are in turn organized within the church into 33 groups known as "Synods"; the Synod in this case being the Washington-Alaska Synod.

4. All the particular churches and judicatories are in turn organized and are subject to the jurisdiction of the supreme assembly or judicatory of the Presbyterian Church known as the "General Assembly", which is the supreme governing body of the church.

IV.

That the Presbyterian Church is a religious society organized and existing pursuant to the laws, rules and regulations adopted by and applicable to such church.

That the general rules, regulations and system of government of the Presbyterian Church are set forth in that portion of the constitution of the Presbyterian Church designated as "The Book of Order", published by the office of the General Assembly of the United Presbyterian Church in the United States of America, in 1967.

That under said constitution, rules and ecclesiastical law, the church government is the Presbyterian form of government, with the various components thereof constituting one united sovereign church and the units being integral parts of the sovereign church and not independent or congregational.

V.

Defendant Laurelhurst Church was dedicated as the First United Presbyterian Church in January, 1893, under the Oregon Presbytery. It was organized as a mission church, becoming self-supporting in 1903. The first church was located at Sixth Avenue and Seneca Street, the congregation moving to another church building at Fourteenth Avenue and East Spring Street in 1908, and finally to its present location in the Laurelhurst section of Seattle, and the name was changed to Laurelhurst United Presbyterian Church.

Article III of the Articles of Incorporation of the Laurelhurst Church recites:

> "The object and purpose of this corporation is to maintain religious services and stated meetings for worship of Almighty God and to cause to be preached and propagated in said city of Seattle and elsewhere the Gospel of Jesus Christ and the teachings of the Holy Spirit and particularly the belief and the practice adhered to by the denomination known as the United Presbyterian Church of North America; and to acquire by gift, purchase or otherwise hold, manage, mortgage, lease, sell, convey and dispose of property of every kind and description both real and personal of said Society and of this corporation for the sole end of carrying out and securing the foregoing objects and purposes."

Article IV of said Articles specifically sets forth that the pastor, elders and trustees are to be selected in accordance

with the constitution of the United Presbyterian Church of North America, said officers to have only the authority granted by the constitution.

In 1958, the United Presbyterian Church of North America and the Presbyterian Church in the United States of America merged to form the United Presbyterian Church in the United States of America. All parties concerned herein have accepted said United Presbyterian Church in the United States of America as the lawful successor of both merged churches.

VI.

That in 1967, the General Assembly of the United Presbyterian Church in the United States of America, the supreme governing body of the church, adopted what is known as the Confession of Faith of 1967. Following the adoption by the General Assembly of the Confession of Faith of 1967, certain members of the congregation of the Laurelhurst Church met to discuss the action of the General Assembly and certain political and social pronouncements to which the defendants and certain members of the Laurelhurst congregation objected.

VII.

That in August of 1967, the defendant pastor, Dr. James L. Rohrbaugh, and all the members of his session except one advised the plaintiff Presbytery that it was their intention not to obey the constitution of the United Presbyterian Church in the United States of America.

VIII.

Pursuant to the Book of Order, plaintiff Presbytery cited defendant Dr. James L. Rohrbaugh to appear on October

30, 1967, before a meeting of the Presbytery to show cause why he should not be removed as pastor of the Laurelhurst United Presbyterian Church, and further cited members of the session save one to appear and show cause why they should not be removed as members of the session of the said Laurelhurst Church. Both the defendant Dr. Rohrbaugh and the members of the session refused to appear before the Presbytery, and stated that the plaintiff Presbytery had no jurisdiction over them or the congregation or property of the church.

IX.

That pursuant to the Book of Order, the plaintiff Presbytery of Seattle did thereafter remove said defendant Dr. James Rohrbaugh as pastor of the Laurelhurst United Presbyterian Church, and the pulpit of the Laurelhurst Church was declared vacant. No appeal was taken by the defendants or either of them or the defendant Laurelhurst Church to the next higher judicatory, Synod of Washington-Alaska, as provided for in the Book of Order.

X.

That plaintiff Presbytery, pursuant to the Book of Order, elected an administrative commission, which was granted full powers of session, and did authorize said administrative commission to take the place of the then existing session of the Laurelhurst United Presbyterian Church. No appeal was taken from this action of removal or of the election of the administrative commission to the next higher judicatory, the Synod of Washington-Alaska.

XI.

That on or about October 5, 1967, at a duly called congregational meeting, a motion and resolution were passed

by the majority of those attending the meeting (the vote was 183 to 11) to withdraw as a congregation from the United Presbyterian Church in the United States of America, and to request that all the names of the members of the congregation be erased from the rolls of Presbytery.

XII.

That there is no provision under the constitution, Book of Order or Book of Discipline of the United Presbyterian Church in the United States of America for a congregation or church to withdraw from the denomination. There are provisions for persons to withdraw individually. That those members of the congregation who wish to withdraw may do so by submitting a request in writing to the administrative commission which was duly, properly and constitutionally elected by the Seattle Presbytery, and said administrative commission may grant such request.

XIII.

That the defendant Dr. James L. Rohrbaugh held his office of pastor, and all of his rights, privileges and duties as pastor and moderator of the session of said Laurelhurst Church were held subject to the Book of Order and Book of Discipline of the United Presbyterian Church in the United States of America and of the Presbytery of Seattle.

XIV.

That the real estate described as follows:

Lot 1 and the South ½ of Lot 11 and all of Lot 12, all in Block 1 of McLaughlin's Lawn Acres as per plat recorded in Volume 18 of Plats, Page 19, Records of King County, Washington,

and

Lot 15 in Block 4 of Laurelhurst as per plat recorded

in Volume 14 of Plats, Page 15, Records of King County, State of Washington;

together with certain personal property described as follows:

Books of Worship, Hymnals, Books, Records, Monies, Temporalities, Bank Accounts in the Stadium Branch of the National Bank of Commerce in King County;—

was acquired for the use and benefit of the Laurelhurst United Presbyterian Church in accordance with the constitution, rules, procedures, and laws of the United Presbyterian Church in the United States of America. That plaintiff Presbytery has a duty imposed upon it to preserve and protect the use of said real and personal property for the use and benefit of the United Presbyterian Church in the United States of America.

XV.

That only such person as may be designated and authorized by the Presbytery of Seattle may be permitted to preach or in any manner act as the pastor of the Laurelhurst United Presbyterian Church.

XVI.

That the defendant Dr. James L. Rohrbaugh has continued to act as pastor of said Laurelhurst United Presbyterian Church, continued to preach from the pulpit, and continued to moderate the meetings of the session, and all of said defendants have continued to use the real and personal property.

XVII.

That the defendants have refused to recognize the authority of the administrative commission elected by plaintiff Presbytery of Seattle, have refused to permit members

of the administrative commission to enter upon the facilities of the said Laurelhurst United Presbyterian Church, and have interfered with and obstructed the efforts of the administrative commission to exercise the power of session of the Laurelhurst United Presbyterian Church.

XVIII.

That the plaintiffs have no adequate remedy at law, and that the church properties are unique and especially adapted for the use and purposes of the church. That defendants will continue to interfere with the right of plaintiff Presbytery to provide religious worship for members of the congregation and other members who desire to remain loyal to the United Presbyterian Church in the United States of America and who recognize the jurisdiction of the plaintiff Presbytery and are willing and desirous of abiding by the constitution of the United Presbyterian Church in the United States of America and the action of the Seattle Presbytery pursuant thereto.

And, from the foregoing Findings of Fact, the Court makes the following

CONCLUSIONS OF LAW

I.

That the Court has jurisdiction over the parties and the cause of action.

II.

That the defendants have acted contrary to the constitution, rules of order, procedures and laws of the United Presbyterian Church in the United States of America.

III.

That those members of the congregation of the Laurelhurst United Presbyterian Church acted contrary to the constitution, rules of order, procedures and laws of the United Presbyterian Church in the United States of America in requesting plaintiff Seattle Presbytery to erase the name of the Laurelhurst congregation and its pastor from the roll of the said Presbytery.

IV.

That the acts of the defendants in attempting to withdraw from the denomination and retain the property exclusive of the rights of plaintiff William Goleeke and the others who desire to remain members of the United Presbyterian Church in the United States of America, are in violation of the constitution, rules of order, procedures and laws of the United Presbyterian Church in the United States of America.

V.

That the plaintiff Presbytery of Seattle is the judicatory having jurisdiction over the said Laurelhurst United Presbyterian Church and the defendants herein. That the action taken by plaintiff Presbytery in removing the defendant Rohrbaugh as pastor and declaring the pulpit vacant on October 3, 1967, was proper and binding upon the defendant Rohrbaugh.

VI.

That the plaintiff Presbytery of Seattle is the judicatory having jurisdiction over the said Laurelhurst United Presbyterian Church and the defendants herein. That the action taken by plaintiff Presbytery in removing the defend-

ant trustees and members of the session of the Laurelhurst United Presbyterian Church was proper and binding upon the said defendants.

VII.

That the defendants or individual members of the congregation of the Laurelhurst United Presbyterian Church have no property rights in any of the church property, either real or personal. That all of said property is held in trust for and belongs to the United Presbyterian Church in the United States of America.

VIII.

That plaintiffs are entitled to the relief sought, together with plaintiffs' costs.

DONE IN OPEN COURT this 9 day of May, 1969.

/s/ WILLIAM J. WILKINS
Judge

Presented by:

/s/ ROBERT A. YOTHERS
Robert A. Yothers

/s/ DOUGLAS P. BEIGHLE
Douglas P. Beighle

Holman, Perkins, Coie, Stone & Olsen
Attorneys for Plaintiffs

APPENDIX E

Served April 23, 1969

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

THE PRESBYTERY OF SEATTLE, INC., a non-profit Washington corporation, and WILLIAM H. GOLEEKE, being a member of the Laurelhurst United Presbyterian Church, and representing all others similarly situated,

Plaintiffs,

vs.

JAMES L. ROHRBAUGH, LAURELHURST UNITED PRESBYTERIAN CHURCH, INC., a Washington non-profit corporation, and ALLEN PRIER, chairman of the Board of Trustees and representing all other Trustees similarly situated, and RALPH SCHREINER, R. W. SPRAGUE, S. R. HANSEN, C. W. GIBBS, R. T. DOWNS, JERRY JOURNEY, EARL R. McMILLAN, FRANK JOHNSON, KARL HOUSE, ARNOLD J. CARLSON, DR. DOO SOO SUH, PHIL GALLAHER, DR. KIRK DOUGLAS, GLEN CARSON and EWART SUFFEL, being the Elders and members of the Session and some of the withdrawing members of the Laurelhurst Church and representing all others similarly situated, as set forth in the Complaint,

Defendants.

No. 691249

DECREE

The above-entitled matter having come on for trial before the undersigned Judge on January 31, 1968, plaintiffs appearing personally and by their attorneys of record, defendants appearing personally and by their attorneys of record, the Court having heard the testimony of witnesses

and considered the exhibits and being fully advised in the premises, and having heretofore entered its Findings of Fact and Conclusions of Law and directed that judgment be entered in accordance therewith, it is hereby

ORDERED, ADJUDGED AND DECREED that the defendants and each of them, and any and all persons represented in this action by said defendants, are hereby:

1. Restrained and enjoined from in any way interfering with the Administrative Commission representing the plaintiff Presbytery of Seattle, Inc. acting with the powers of Session of the Laurelhurst United Presbyterian Church;

2. Restrained and enjoined from in any way interfering with plaintiff Presbytery providing a pastor for the Laurelhurst United Presbyterian Church;

3. Restrained and enjoined from using the name "United Presbyterian Church" or the name "Laurelhurst United Presbyterian Church" or any similar name or combination thereof;

4. Restrained and enjoined from in any way interfering with or obstructing by any conduct of any of the defendants or of any person acting by, for, through, or on behalf of the defendants, with plaintiffs' right to conduct services and worship in said Laurelhurst United Presbyterian Church;

5. Restrained and enjoined from diverting any of the properties of the said Laurelhurst United Presbyterian Church, or from in any way selling, leasing, encumbering, or disposing of any of the real estate described as follows:

Lot 1 and the South ½ of Lot 11 and all of Lot 12, all in Block 1 of McLaughlin's Lawn Acres as per plat recorded in Volume 18 of Plats, Page 19, Records of King County, Washington,

and

Lot 15 in Block 4 of Laurelhurst as per plat re-

corded in Volume 14 of Plats, Page 15, Records of King County, State of Washington,

or of any of the personal property; and it is

FURTHER ORDERED, ADJUDGED AND DECREED that the defendant James L. Rohrbaugh is hereby restrained and enjoined from officiating as the Pastor of Laurelhurst United Presbyterian Church or of any church that is a member of Presbytery of Seattle, Inc.; and it is

FURTHER ORDERED, ADJUDGED AND DECREED that the defendants and each of them are hereby directed to deliver immediately to the plaintiff Presbytery of Seattle the possession and occupancy of said church and the manse located on the above-described real estate, and it is

FURTHER ORDERED, ADJUDGED AND DECREED that the defendants are directed to deliver into the care, custody and control of the plaintiff Presbytery of Seattle the following personal property and documents:

1. The books and documents of Laurelhurst United Presbyterian Church;
2. The roll of active Elders and their addresses;
3. The roll of communicant members and their addresses;
4. The deed to the church property and the manse;
5. The corporate charter;
6. The ecclesiastical and corporate by-laws, both old and new;
7. Minutes of all meetings of the Session, congregation and corporation;
8. Other church records in the possession of the defendant Pastor, or the defendant Prier and members of

the Board of Trustees, or the defendant Schreiner and members of the Session; and it is hereby

FURTHER ORDERED, ADJUDGED AND DECREED that the defendants are directed to make a full and complete accounting of all funds and properties of the Laurelhurst United Presbyterian Church from October 1, 1967, to date; and it is hereby

FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this matter for 30 days for the purpose of entering judgment against the defendants, jointly and severally, in such amount as shall be determined by reason of said accounting, covering such sums as were expended or obligations incurred without permission of plaintiff Presbytery of Seattle or of the Administrative Commission elected by plaintiff Presbytery of Seattle; and it is hereby

FURTHER ORDERED, ADJUDGED AND DECREED that plaintiffs have judgment against the defendants and each of them, jointly and severally, for plaintiffs' costs incurred herein.

DONE IN OPEN COURT this 9 day of May, 1969.

/s/ WILLIAM J. WILKINS
Judge

Presented by:

/s/ ROBERT A. YOTHERS
Robert A. Yothers

/s/ DOUGLAS P. BEIGHLE
Douglas P. Beighle, of Holman, Perkins, Coie, Stone & Olsen
Attorneys for Plaintiffs

APPENDIX F

The Book of Order, Part II, The Constitution of the United Presbyterian Church in the United States of America (1967-68), Chapter V, paragraphs 35.02, 35.03 and 35.06 (Ex. 1) states in part:

> . . . And we hold it to be expedient, and agreeable to Scripture and the practice of the primitive Christians, that the Church be governed by sessions, presbyteries, synods, and general assemblies. In full consistency with this belief, we embrace, in the spirit of charity, those Christians who differ from us, in opinion or in practice, on these subjects.
>
> 3. These judicatories ought not to possess any civil jurisdiction, or to impose any civil penalties. Their power is wholly moral or spiritual, and that only ministerial and declarative. They possess the right of requiring obedience to the laws of Christ and of excluding the disobedient and disorderly from the privileges of the Church. To give efficiency, however, to this necessary and Scriptural authority, they possess the powers requisite for obtaining evidence and inflicting censure. They can call before them any offender against the order and government of the Church; they can require members of their own society to appear and give testimony in the cause; but the highest punishment to which their authority extends is to exclude the contumacious and impenitent from the congregation of believers.
>
> * * *
>
> 6. Ecclesiastical power, which is wholly spiritual, is twofold: the officers so chosen exercise it sometimes severally, in their personal ministries in the Church; and they exercise it sometimes jointly, in Church judicatories, which is the power of jurisdiction.

In addition, said Constitution, paragraphs 31.07 and 31.08 (Ex. 1), provides:

> That all church power, whether exercised by the body in general or in the way of representation by

delegated authority, is only ministerial and declarative; that is to say, that the Holy Scriptures are the only rule of faith and manners; that no church judicatory ought to pretend to make laws to bind the conscience in virtue of their own authority; ° ° °

Lastly, that, if the preceding Scriptural and rational principles be steadfastly adhered to, the vigor and strictness of its discipline will contribute to the glory and happiness of any Church. Since ecclesiastical discipline must be purely moral or spiritual in its object, and not attended with any civil effects, it can derive no force whatever but from its own justice, the approbation of an impartial public, and the countenance and blessing of the great Head of the Church Universal.

Under the rules quoted above from the Book of Order, Presbyteries and individuals have no "civil jurisdiction." "Their power is wholly moral and spiritual."